

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MARY JANE LEE, VC 2013-PR-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit greater than 30 percent minimum rear yard coverage. Located at 9207 Briary Ln, Fairfax, 22031, on approx. 10,765 sq. ft. of land zoned R-3. Providence District. Tax Map 58-4 ((33)) 38. (Concurrent with SP 2013-PR-023). (Decision deferred from 6/5/13). Mr. Smith moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 2013; and

WHEREAS, the Board has made the following findings of fact:

1. The owners of the property are Harlan Lee and Mary Jane Lee.
2. The present zoning is R-3.
3. The area of the lot is 10,765 square feet.
4. We started out with 58 percent coverage.
5. We have given this a great deal of scrutiny.
6. It has been back a couple of times.
7. The applicant has done quite a bit of due diligence in trying to reduce the coverage.
8. One of the big differences with the case that we denied earlier at this meeting was the concerns included, if you look at the variance conditions, Number 7 regarding detriment to adjacent property and Number 8 regarding character of the zoning district, we do not have those issues in this case.
9. The coverage issues here are in the rear yard.
10. They are not visible in the community.
11. The rear yard abuts against Little River Turnpike, a four-lane divided highway, arterial.
12. In this case, walking through the variance provisions, the property was certainly acquired in good faith.
13. Looking at the characteristics of the property, this is a tougher call. This is certainly not an easy case.
14. We have grappled with this quite a bit and have had other coverage cases.
15. In this case, however, there is an extraordinary situation or condition of the subject property.
16. If you look at the location of this house on the plat, it was situated on the lot 25 feet behind the building restriction line. So you have a 30-foot front yard setback.
17. The house was set 25 feet behind that.
18. If it had been set 25 feet forward, we probably would not be in this situation because you would not have had the rear yard coverage issues.

19. You have significantly more pervious space in the front.
20. So if that had not happened, we would not be in this situation, so that is a bit of an extraordinary, unusual situation as far as the condition on the property and where the house is located on the property.
21. The adjacent properties, the grade increases towards the rear of the property, referenced as seven feet towards Little River Turnpike.
22. The condition or situation of the property is not of so general or recurring of nature as to make reasonably practicable the formulation of a general regulation.
23. Strict application of the Ordinance would an undue hardship.
24. There was a building permit that was obtained for a pool. Unbeknownst to the applicant, it required no deck. It seems a little unusual that you would build a pool without having any kind of a deck. It is normally expected with a pool.
25. It was constructed in good faith.
26. It would be a significant cost to remove the drainage system that has been installed, the plumbing and electrical, et cetera.
27. This hardship is not shared by other properties in the same zoning district and vicinity.
28. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege.
29. The authorization of the variance will not be of substantial detriment to adjacent property looking at what is in the rear of the property.
30. There has been no opposition from any other neighbors in the community.
31. The character of the zoning district will not be changed.
32. The variance will be in harmony with the intended spirit and purpose of the Ordinance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
 - A. Exceptional narrowness at the time of the effective date of the Ordinance;
 - B. Exceptional shallowness at the time of the effective date of the Ordinance;
 - C. Exceptional size at the time of the effective date of the Ordinance;
 - D. Exceptional shape at the time of the effective date of the Ordinance;
 - E. Exceptional topographic conditions;
 - F. An extraordinary situation or condition of the subject property, or
 - G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

- A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
- B. The granting of a variance will alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of reasonable use of the land and/or buildings involved.

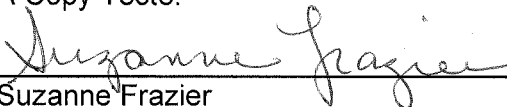
NOW, THEREFORE, BE IT RESOLVED that the subject application is **APPROVED** with the following limitations:

1. This variance is approved for the rear yard coverage (55%) on the property as shown on the plat prepared by William E. Ramsey, June 27, 2012, revised through September 11, 2013, as submitted with this application and is not transferable to other land.
2. This variance is granted only for the existing hot tub and gazebo on the site and does not include replacement structures in these locations.
3. This variance is granted on the condition that there shall be no future increase in impervious surface on the lot.

This approval, contingent upon the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards including requirements for building permits.

Mr. Beard seconded the motion, which carried by a vote of 6-0. Ms. Theodore was absent from the meeting.

A Copy Teste:


Suzanne Frazier

Deputy Clerk to the Board of Zoning Appeals